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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

CHRISTINA O.,

Petitioner,

v.

THE SUPERIOR COURT OF MERCED
COUNTY,

Respondent,

MERCED COUNTY DEPARTMENT OF
HUMAN SERVICES,

Real Party in Interest.

F043606

(Super. Ct. No. 24915)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Frank Dougherty,
Judge.

Christina O., in pro. per., for Petitioner.

No appearance for Respondent.

Ruben E. Castillo, County Counsel, and David A. Olsen, Deputy County Counsel,
for Real Party in Interest.

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* Before Vartabedian, Acting P.J., Wiseman, J. and Gomes, J.

Petitioner, mother of minor S., in pro. per. seeks an extraordinary writ (Cal. Rules of Court, rule 39.1B) to vacate the order of the juvenile court made at the post-permanency review hearing setting a Welfare and Institutions Code section 366.26 hearing.¹ We will deny the petition.

STATEMENT OF THE CASE AND FACTS

Petitioner and her husband, R., have two sons, D. and S. Petitioner has a developmental disability for which she receives self-care services. In February 2001, R. twisted then one-year-old S.'s arm and dislocated his elbow. This was not the first instance of physical abuse in the home. Consequently, the Merced County Department of Human Services (department) removed the boys and filed dependency petitions on their behalf. S. and D. were placed with separate paternal relatives.

At the dispositional hearing, the juvenile court assumed dependency jurisdiction and ordered a plan of reunification for petitioner only. She was court-ordered to complete a domestic violence prevention program, parenting training, counseling, and develop a Relapse Prevention Plan. The court continued services for 12 months and petitioner complied; however, she was unable to disassociate herself from R. She was seen at his apartment despite a restraining order and she maintained telephone contact with him. The court terminated reunification services and set the matter for permanency planning. At the section 366.26 hearing in November 2002, the court terminated petitioner and R.'s parental rights as to D. and ordered him placed for adoption. The court ordered S. into long-term foster care and set a review hearing.

In its status review, the department reported that petitioner and R. were seen shopping together in November 2002. In addition, S.'s foster parents were willing to adopt him and had already submitted their application. The department recommended

¹ All further references are to the Welfare and Institutions Code, unless otherwise indicated.

the court change S.'s permanent plan from long-term foster care to adoption. Petitioner set the matter for a contested review hearing.

At the contested hearing, petitioner argued that S. should be returned to her care. She called her social worker, counselor and independent living specialist from the rehabilitation center to testify on her behalf. They all testified petitioner mastered basic living skills and opined that she would not allow contact with R. Her social worker believed she was fully prepared to take care of S. and the specialist expressed no concern if S. were returned to petitioner's care for an extended period of time. The specialist testified that petitioner would continue to receive assistance and monitoring and that the agency was a mandated reporter and would report any problems to the department. Petitioner testified that she visits with S. every Saturday and even baby-sits every Friday for S., as well as for the foster parents' two- and four-year-old children for four to six hours. She had no intention of reunifying the entire family and would contact her counselor if she had any problems.

After taking the matter under submission, the court found that adoption was an appropriate permanent plan and set the matter for a November 18, 2003, section 366.26 hearing. This petition ensued.

DISCUSSION

Petitioner claims the court discriminated against her because of her disability and therefore erred in setting the matter for a section 366.26 hearing. We disagree.

Once a child is placed in long-term foster care, section 366.3 requires the juvenile court to review the child's placement at least every six months. (§ 366.3, subd. (d).) At the review hearing, the court must consider all permanency planning options for the child including returning the child to the home of the parent, placing the child for adoption, appointing a legal guardian or continuing the child in long-term foster care. (§ 366.3, subd. (g).) While the court must consider these options, long-term foster care is the least favored. (*San Diego County Dept. of Social Services v. Superior Court* (1996) 13 Cal.4th

882, 888, fn. 3.) In fact, “the law obligates the juvenile court to proceed under the presumption that long-term foster care is inappropriate.” (*Id.* at p. 888.) Indeed, the governing statute, section 366.3, compels the juvenile court to order a section 366.26 hearing for a child in long-term foster care unless the court finds by “clear and convincing evidence” that such a hearing is not in the child’s best interest because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. (§ 366.3, subd. (g).) The parent seeking return of the child has the burden of showing that returning the child to his or her care would be in the child’s best interest. (*Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1147.) We review the juvenile court’s orders and findings for substantial evidence, resolving all conflicts in favor of the court and indulging in all legitimate inferences to uphold the court’s finding. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.)

In this case, the juvenile court did not expressly find that it would not be in S.’s best interest to be returned to petitioner’s custody. However, we may infer the proper finding where, as here, it is supported by substantial evidence. (*In re Corienna G.* (1989) 213 Cal.App.3d 73, 83-84.) The department reported that petitioner and R.’s continued contact and petitioner’s self-care disabilities posed a risk of danger to S. if he were returned to petitioner’s care. Moreover, S. was bonded to his foster parents who wanted to adopt him. Finally, contrary to petitioner’s assertion, there is no evidence the juvenile court discriminated against her because of her disability. She presented extensive testimony favorable to her position and we can infer that the juvenile court properly weighed the evidence and drew any reasonable inferences it found warranted. (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 598; Evid. Code, § 664.) However, the evidence was simply insufficient to establish that return of S. to petitioner’s custody was in his best interest. We find no error.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.